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August 29, 2007

Via Overnight Courier

Mr. Jeffrey N. Lüthi, Clerk
Judicial Panel on Multidistrict Litigation
One Columbus Circle, NE
Thurgood Marshall Judiciary Building, Rm G-255
Washington, D.C. 20002

Re: **MDL No. 1334, *In re Managed Care Litigation***

Dear Mr. Lüthi:

I am co-counsel for plaintiffs in a case currently pending before the Honorable Faith S. Hochberg in the U.S. District Court for the District of New Jersey, *Cooper v. Aetna Health, Inc., PA, Corp.*, 2:07-cv-03541-FSH-PS (D.N.J.). I write this in response to a letter to you dated August 24, 2007, from Miguel A. Estrada of Gibson, Dunn & Crutcher LLP, on behalf of defendant Aetna, Inc.

Mr. Estrada wrote on behalf of Aetna purportedly to notify the Panel, in accordance with Rule 7.5(e), that the *Cooper* action was a potential “tag-along” to *In re Managed Care Litigation*, MDL No. 1334, currently pending before the Honorable Federico Moreno in the U.S. District Court for the Southern District of Florida (“*MDL Litigation*”). Mr. Estrada is mistaken, however, and there is no need for the Judicial Panel on Multidistrict Litigation (the “Panel”) to spend its valuable time reconsidering an issue it has already resolved, as described below.

Plaintiff’s counsel filed a virtually identical litigation on behalf of a subscriber to a health care plan offered by CIGNA, which is also pending before Judge Hochberg. *See Franco v. Connecticut General Life Insurance Co.*, 1:04-cv-23187-FSH-PS (D.N.J.). In both *Franco* and *Cooper*, we have brought claims on behalf of putative classes of subscribers that the defendant at issue improperly relied upon certain databases developed and promulgated by Ingenix, Inc. to determine usual, customary and reasonable (“UCR”) rates for out-of-network providers, in violation of the Employee Retirement Income Security Act of 1974 (“ERISA”). Just as Aetna does here, CIGNA sought to have that case transferred to Judge Moreno in the *MDL litigation*. However, after the Panel conditionally transferred the case to Judge Moreno for consideration as to whether it belonged with the MDL, Judge Moreno decided that the litigation was

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properly before Judge Hochberg and issued an Order Granting Plaintiffs' Motion for Suggestion of Remand dated September 23, 2005. The Panel subsequently agreed with Judge Moreno's decision and issued a remand order, sending the case back to Judge Hochberg, dated February 13, 2006. Copies of these decisions are attached hereto as Exhibits A and B, respectively.

Given the clear identity of factual and legal issues in *Franco* and *Cooper*, and the fact that both Judge Moreno and this Panel have concluded that such a UCR case should appropriately remain before Judge Hochberg rather than before Judge Moreno, *Cooper* is not a proper tag-along case to the *In re Managed Care Litigation*. This conclusion is particularly appropriate, given that the core cases from *In re Managed Care* have *all* been resolved, either by settlement or on summary judgment. The only remaining cases before Judge Moreno are unrelated tag-along actions. Consistent with the Panel's determination in *Franco*, *Cooper* should therefore be allowed to continue to be litigated before Judge Hochberg in New Jersey.

Very truly yours,


D. Brian Hufford



cc: MDL-1334 Panel Attorney Service List
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